IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 160 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI SHAMJIBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 160 of 1992

MR MC BAROT for Petitioners No. 1-2

MR BD DESAI PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/01/2002

ORAL JUDGEMENT

#. This Revision Application is filed under Section 397 of the Criminal Procedure Code, 1973, challenging the order dated 22.4.1992 recorded by the learned Sessions

Judge, Kheda at Nadiyad in Criminal Case No.15/1991 under which the learned Special Judge directed that the present two petitioners be prosecuted in accordance with the provisions made under Section 193 of the I.P.C. in accordance with the provision contained under Section 344 of the Code.

#. It appears that the Criminal Case No.15/1991 was conducted by the learned Special Judge, Kheda at Nadiyad against 3 accused persons. The present petitioners were examined as witnesses in the said case. At the end of the trial the learned Judge found that the offence alleged against the accused persons in that special case was not proved and, therefore, the accused persons of that Special Case were acquitted from the offences punishable under Section 325, 504 and 506(2) of the I.P.C.. as well as from the offences punishable under Section 3(1)(10) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities Act) 1989.

#. Simultaneously the learned Judge also passed an order that the present 2 petitioners and one Dahyabhai had given false evidence on oath before the Court and, therefore, the appropriate action should be taken for an offence punishable under Section 193 of the I.P.C. in accordance with the provision of law under Section 344 of the said Code.

#. Accordingly, notices were issued and after hearing them the learned Judge has passed an order that they be prosecuted as aforesaid.

#. Feeling aggrieved by the said two orders of the learned Sessions Judge the petitioners have preferred this Revision Application before this Court.

#. It is mainly contended that there was no intention on the part of the petitioners in giving a particular evidence before the trial Court. It is further contended that the provision contained under Section 344 of the Code would not be attracted in light of the background of the case in question. That, in fact the trial Court has not given any reason for initiating proceedings against the petitioner during the course of the judgment in Criminal Case No.15/1992. That on the whole the orders of the learned Judge are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that the present Revision Application be allowed and the aforesaid order be set aside.

#. On receiving the Revision Application rule was issued

and Mr.B.D.Desai, learned APP appears on behalf of the State.

#. I have heard Mr.M.C.Barot. learned advocate for the petitioners and Mr.B.D.Desai, learned APP and have perused the papers.

#. On going through the judgment of the trial Court dated 30.10.1999 in Criminal Case No.15/1991 it is clear that during the course of the judgment the learned Judge did not take any decision for proceedings against the present petitioners till the operation portion of the judgment came to be dictated, therefore, till that part there is no mention about the proceeding to be taken against the petitioner under Section 344 of the Code.

##. In the operative portion of the said judgment the learned Judge has observed that the petitioners and one Dahyabhai have given false evidence on oath intentionally and, therefore, appropriate action should be taken against them.

##. With this aspect of the case it would be worth which to refer to the provision made under Section 344 of the Code, which can be reproduced for readiness as follows:-

> Sec.344 Summary Procedure for trial for giving false evidence,- (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Sessions or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment of a term which may extent to three months, or to fine which may extend to five hundred rupees, or with both.
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> (2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.
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> (3) Nothing in this section shall affect the power of the court to make a complaint under Sec.340 for the offence, where it does not choose

to proceed under this section.

(4) Where, after any action is initiated under sbu-sec. (1), it is made to appear to the Court of Sessions or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

##. It will be useful to say here that as per the provision made in Sub-section 1 of Section 344 of the code the preceding officer of the Court is required to express an opinion to the effect that any witness appearing in proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment as indicated in the said section. It would be therefore necessary for such presiding officer to form an opinion as indicated in Section 344 of the Code.

##. In the present case I find that during the course of judgment the learned Judge has not indicated that he has formed an opinion as required by Sub-Section 1 of Section 344 of the Code. It has also not been indicated by the learned Judge that, he found that, it was expedient to prosecute the petitioners for giving false evidence before the Court. Therefore, the requirement of Section 344 (1) of the Code have not been satisfied.

##. In light of the facts and circumstances of the case it would be relevant to refer to a decision of this Court in the case of Ambalal Bhavanishanker Upadhyay Vs. Rasiklal Manilal Mehta, reported in 1996(1) GLR P51. There it has been observed by the learned Single Judge of this Court that, When learned Judge has not recorded any satisfaction that the petitioner deliberately and

knowingly deposed falsely, every incorrect or false statement does not make it incumbent upon the Court to order prosecution. The Court has to exercise judicial discretion in light of the relevant circumstances when it determines the question of expediency. The Court has to order prosecution in the larger interest of administration of justice and not to show the feelings of personal revenge or vindictiveness. Such prosecution, if frequently initiated would tend to defeat itself from the object.

##. The Court in that matter referred the provision made in Section-344 of the Code and found that when such an intention is not recorded the order for prosecution of the witness cannot be upheld.

##. The learned Judge also referred the decision of the Hon'ble Apex Court in the case of Narayan Swamy Vs. The State of Maharashtra, reported in AIR 1971 Supreme Court 1789, wherein it has been observed that before filing complaint against a witness for perjury, the Court must form an opinion that the witness has either given intentionally false evidence or has intentionally fabricated false evidence and further must form an opinion that it is expedient in the interest of justice that the witness should be prosecuted for the offence committed by him.

##. In the case of Chhotubhai Becharbhai Patel Vs. Nagin N. Gandhi, reported in 1979(2) GRL P.77, again it has been observed that before filing of a complaint under Section 195 (1)(b), the Court must form an opinion that an inquiry into the offence is essential in the interests of justice and if no such opinion is formed first requirement under Section 340(1) of the Code has not been observed. It appears that on fact the matter was little different but on principle it was laid down that the Court must form an opinion as indicated under Sub-section (1) of Section 340 before proceeding ahead with the prosecution of any witness.

##. In the present case we can easily notice that so far the forming of an opinion is concerned, there is total absence of evidence formation of opinion through out the judgment of the learned Judge dated 30.10.1991 in Criminal Case No.15/1991. The order only speaks that appropriate notice be issued under Section 344 of the Code, before that no opinion was formed and it has never been indicated that the learned Judge found that it would be expedient to prosecute the witness.

##. Therefore, there is legal and technical error on the part of the learned Judge while passing the order for issuing notice under Section 344 of the Code and before doing so he did not form an opinion in accordance with the requirement of Section 340 (1) and under Section 344(1) of the said Code. In that view of the matter, the order in question cannot be upheld and sustained.

##. During the course of hearing the learned APP was also unable to say as to how the order in question could stand.

##. For the foregoing reasons and in view of the apparent legal error on the part of the learned Judge this Revision Application is required to be allowed. Accordingly, this Revision Application is allowed and the orders impugned in the Revision petition are ordered to be quashed and set aside. Rule is made absolute to the above extent.

kks (D. P. BUCH, J.)